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SENATE BILL 503

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO HOUSING; ENACTING THE NEW MEXICO HOUSING TRUST FUND ACT; CREATING A FUND; DESIGNATING FUNDING SOURCES; CREATING AN ADVISORY COMMITTEE; PROVIDING CERTAIN POWERS TO THE NEW MEXICO MORTGAGE FINANCE AUTHORITY; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "New Mexico Housing Trust Fund Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the New Mexico Housing Trust Fund Act is to provide flexible funding for housing initiatives in order to produce significant additional housing investment in New Mexico.

Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the New Mexico Housing Trust Fund Act:

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1 A. "authority" means the New Mexico mortgage
2 finance authority;

3 B. "committee" means the New Mexico housing trust
4 fund advisory committee;

5 C. "extremely low-income person" means a household
6 consisting of a single individual or a family or unrelated
7 individuals living together when the household's total annual
8 income does not exceed thirty percent of the median income for
9 the area, as determined by the United States department of
10 housing and urban development and as adjusted for family size;

11 D. "fund" means the New Mexico housing trust fund;
12 and

13 E. "low-income person" means a household consisting
14 of a single individual or a family or unrelated individuals
15 living together when the household's total annual income does
16 not exceed eighty percent of the median income for the area, as
17 determined by the United States department of housing and urban
18 development and as adjusted for family size, or eighty percent
19 of the state median income, whichever is greater.

20 Section 4. [NEW MATERIAL] FUND CREATED.--

21 A. The "New Mexico housing trust fund" is created
22 in the authority. The fund shall consist of all distributions
23 and appropriations made to the fund. Earnings of the fund
24 shall be credited to the fund, and unexpended and unencumbered
25 balances in the fund shall not revert to any other fund. The

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1 authority shall be the trustee for the fund.

2 B. The fund shall consist of revenue from the
3 following recurring sources:

4 (1) proceeds from unclaimed property pursuant
5 to Section 7-8A-13 NMSA 1978;

6 (2) net proceeds from the user fee imposed for
7 private activity bonds used to provide financing for housing in
8 the Private Activity Bond Act;

9 (3) appropriations and transfers from the
10 general fund; and

11 (4) any other money appropriated or
12 distributed to the fund.

13 C. Money in the fund is appropriated to the
14 authority for the purposes of carrying out the provisions of
15 the New Mexico Housing Trust Fund Act.

16 Section 5. [NEW MATERIAL] ADVISORY COMMITTEE CREATED.--

17 A. The "New Mexico housing trust fund advisory
18 committee" is created. The committee shall consist of thirteen
19 persons appointed by the authority's governing body:

20 (1) the chair of the authority or the chair's
21 designee, who shall serve as chair of the committee;

22 (2) one representative of nonprofit housing
23 developers;

24 (3) one representative of for-profit housing
25 developers;

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- 1 (4) one representative of the real estate
2 industry;
3 (5) one representative of the mortgage lending
4 industry;
5 (6) one representative of the title insurance
6 industry;
7 (7) one representative from a nonprofit
8 housing agency;
9 (8) one representative from a local
10 governmental housing agency;
11 (9) one representative of rural constituents;
12 (10) one representative of urban constituents;
13 (11) one representative of tribal
14 constituents;
15 (12) one representative of border
16 constituents; and
17 (13) one representative of special needs
18 constituents.

19 B. Of the first committee members appointed, four
20 shall be appointed for terms of five years, four shall be
21 appointed for terms of four years and four shall be appointed
22 for terms of three years. Thereafter, appointed members shall
23 be appointed for terms of five years. Members shall serve at
24 the pleasure of the authority's governing body, and vacancies
25 shall be filled by the authority's governing body. Members of

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1 the committee shall be eligible for reappointment.

2 C. The committee shall be advisory to the authority
3 and shall be subject to oversight by the Mortgage Finance
4 Authority Act oversight committee.

5 D. The committee shall review all project
6 applications and make recommendations to the authority for
7 funding them. The committee shall not be involved in or
8 advisory to the authority in matters relating to the investment
9 of the fund.

10 E. The committee shall adopt rules regarding:

11 (1) the time, place and procedures of
12 committee meetings; and

13 (2) the procedures for the review of and
14 standards for recommending applications for loans or grant
15 projects.

16 Section 6. [NEW MATERIAL] AWARD OF FUNDS--
17 ACCOUNTABILITY.--

18 A. Trust funds shall be awarded on a competitive
19 basis. The authority's staff shall work with the committee to
20 develop an application and applicant scoring mechanism that
21 encourages applicants to develop solutions that are responsive
22 to local needs and are consistent with sound housing policy.

23 B. The authority's governing body shall be
24 responsible for ensuring that on an annual basis the total
25 funds awarded for housing activities attract at least three

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1 times as much funding from other sources.

2 Section 7. [NEW MATERIAL] USE OF FUNDS--ELIGIBLE
3 ACTIVITIES.--Money from the fund and matching funds from other
4 sources may be used to finance in whole or in part any loans or
5 grant projects that will provide housing for low-income persons
6 and extremely low-income persons. Money deposited into the
7 fund may be used annually as follows:

8 A. no more than five percent of the fund shall be
9 used for expenses of administering the fund;

10 B. no less than fifteen percent of the fund shall
11 be invested in a permanent capital fund, or fully amortizing
12 interest-bearing mortgages secured by real property in New
13 Mexico, the earnings on which may be used for purposes
14 specified in this section;

15 C. no less than fifty-six percent of the fund shall
16 be allocated to eligible organizations to make housing more
17 accessible to low-income persons; and

18 D. no less than twenty-four percent of the fund
19 shall be allocated to eligible organizations to make housing
20 more accessible to extremely low-income persons.

21 Section 8. [NEW MATERIAL] CONFLICT WITH FEDERAL
22 REQUIREMENTS.--If any part of the New Mexico Housing Trust Fund
23 Act is found to be in conflict with federal requirements that
24 are a prescribed condition to the allocation of federal funds
25 to the state, the conflicting part of that act is inoperative

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1 solely to the extent of the conflict and with respect to the
2 agencies directly affected, and this finding does not affect
3 the operation of the remainder of that act in its application
4 to the agencies concerned. The rules adopted pursuant to the
5 provisions of the New Mexico Housing Trust Fund Act shall meet
6 those federal requirements that are a necessary condition to
7 the receipt of federal funds by the state.

8 Section 9. [NEW MATERIAL] MATCHING FUNDS.--Money from the
9 fund may be used to match federal, local or private money to be
10 used for projects authorized under the New Mexico Housing Trust
11 Fund Act.

12 Section 10. A new section of the Private Activity Bond
13 Act is enacted to read:

14 "[NEW MATERIAL] USER FEE ON PRIVATE ACTIVITY BONDS--
15 FINANCING FOR HOUSING.--The user shall pay a fee equal to
16 fifteen-hundredths percent of each request for private activity
17 bonds used to provide financing for housing. The fee shall be
18 paid to the state board of finance for deposit in the New
19 Mexico housing trust fund."

20 Section 11. Section 7-8A-13 NMSA 1978 (being Laws 1997,
21 Chapter 25, Section 13) is amended to read:

22 "7-8A-13. DEPOSIT OF FUNDS.--

23 (a) Except as otherwise provided by this section,
24 the administrator shall promptly deposit in the tax
25 administration suspense fund for distribution to the ~~[general~~

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1 ~~fund]~~ New Mexico housing trust fund of this state all funds
2 received under the Uniform Unclaimed Property Act (1995),
3 including the proceeds from the sale of abandoned property
4 under Section [~~12 of that act]~~ 7-8A-12 NMSA 1978. The
5 administrator shall retain in the unclaimed property fund at
6 least one hundred thousand dollars (\$100,000), from which the
7 administrator shall pay claims duly allowed. The administrator
8 shall record the name and last known address of each person
9 appearing from the holders' reports to be entitled to the
10 property and the name and last known address of each insured
11 person or annuitant and beneficiary and with respect to each
12 policy or annuity listed in the report of an insurance company,
13 its number, the name of the company and the amount due.

14 (b) Before making a deposit to the tax
15 administration suspense fund, the administrator may deduct:
16 (1) expenses of sale of abandoned property;
17 (2) costs of mailing and publication in
18 connection with abandoned property;
19 (3) reasonable service charges; and
20 (4) expenses incurred in examining records of
21 holders of property and in collecting the property from those
22 holders."

23 Section 12. Section 58-18-5 NMSA 1978 (being Laws 1975,
24 Chapter 303, Section 5, as amended) is amended to read:

25 "58-18-5. POWERS OF THE AUTHORITY.--The authority shall

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1 have all the powers necessary or convenient to carry out and
2 effectuate the purposes and provisions of the Mortgage Finance
3 Authority Act, including but without limiting the generality of
4 the foregoing, the power:

5 A. to sue and be sued;

6 B. to have a seal and alter it at pleasure;

7 C. to make and alter bylaws for its organization
8 and internal management;

9 D. to appoint other officers, agents and employees,
10 prescribe their duties and qualifications and fix their
11 compensation;

12 E. to acquire, hold, improve, mortgage, lease and
13 dispose of real and personal property for its public purposes;

14 F. subject to the provisions of Section 58-18-6
15 NMSA 1978, to make loans, and contract to make loans, to
16 mortgage lenders;

17 G. subject to the provisions of Section 58-18-7
18 NMSA 1978, to purchase, and contract to purchase, mortgage
19 loans from mortgage lenders;

20 H. to procure or require the procurement of a
21 policy of group or individual life insurance or disability
22 insurance or both to insure repayment of mortgage loans in
23 event of the death or disability of the borrower and to pay any
24 premiums for the policy;

25 I. to procure insurance against any loss in

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1 connection with its operations, including without limitation
2 the repayment of any mortgage loan, in amounts and from
3 insurers, including the federal government, that the authority
4 deems necessary or desirable; to procure liability insurance
5 covering its members, officers and employees for acts performed
6 within the scope of their authority as members, officers or
7 employees; and to pay any premiums for insurance procured;

8 J. subject to any agreement with bondholders or
9 noteholders:

10 (1) to renegotiate any mortgage loan or any
11 loan to a mortgage lender in default;

12 (2) to waive any default or consent to the
13 modification of the terms of any mortgage loan or any loan to a
14 mortgage lender and otherwise exercise all powers with respect
15 to its mortgage loans and loans to mortgage lenders that any
16 private creditor may exercise under applicable law; and

17 (3) to commence, prosecute and enforce a
18 judgment in any action or proceeding, including without
19 limitation a foreclosure proceeding, to protect or enforce any
20 right conferred upon it by law, mortgage loan agreement,
21 contract or other agreement; and in connection with any such
22 proceeding, to bid for and purchase the property or acquire or
23 take possession of it and, in such event, complete, administer,
24 pay the principal of and interest on any obligations incurred
25 in connection with the property and operate or dispose of and

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1 otherwise deal with the property in such manner as the
2 authority may deem advisable to protect its interests therein;

3 K. to make and execute contracts for the
4 administration, servicing or collection of any mortgage loan
5 and pay the reasonable value of services rendered to the
6 authority pursuant to such contracts;

7 L. to fix, revise from time to time, charge and
8 collect fees and other charges in connection with the making of
9 mortgage loans, the purchasing of mortgage loans and any other
10 services rendered by the authority;

11 M. subject to any agreement with bondholders or
12 noteholders, to sell any mortgage loans at public or private
13 sale at such prices and on such terms as the authority shall
14 determine;

15 N. to borrow money and to issue bonds and notes
16 that may be negotiable and to provide for the rights of the
17 holders thereof;

18 O. to arrange for guarantees or other security,
19 liquidity or credit enhancements in connection with its bonds,
20 notes or other obligations by the federal government or by any
21 private insurer or other provider and to pay any premiums
22 therefor;

23 P. subject to any agreement with bondholders or
24 noteholders, to invest money of the authority not required for
25 immediate use, including proceeds from the sale of any bonds or

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1 notes:

2 (1) in obligations of any municipality or the
3 state or the United States of America;

4 (2) in obligations the principal and interest
5 of which are guaranteed by the state or the United States of
6 America;

7 (3) in obligations of any corporation wholly
8 owned by the United States of America;

9 (4) in obligations of any corporation
10 sponsored by the United States of America that are or may
11 become eligible as collateral for advances to member banks as
12 determined by the board of governors of the federal reserve
13 system;

14 (5) in certificates of deposit or time
15 deposits in banks qualified to do business in New Mexico,
16 secured in the manner, if any, as the authority shall
17 determine;

18 (6) in contracts for the purchase and sale of
19 obligations of the types specified in this subsection; or

20 (7) as otherwise provided in any trust
21 indenture or a resolution authorizing the issuance of the bonds
22 or notes;

23 Q. subject to any agreement with bondholders or
24 noteholders, to purchase bonds or notes of the authority at the
25 price as may be determined by the authority or to authorize

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1 third persons to purchase bonds or notes of the authority;
2 bonds or notes so purchased shall be canceled or resold, as
3 determined by the authority;

4 R. to make surveys and to monitor on a continuing
5 basis the adequacy of the supply of:

6 (1) funds available in the private banking
7 system in the state for affordable residential mortgages; and

8 (2) adequate, safe and sanitary housing
9 available to persons of low or moderate income in the state and
10 various sections of the state;

11 S. to make and execute agreements, contracts and
12 other instruments necessary or convenient in the exercise of
13 the powers and functions of the authority under the Mortgage
14 Finance Authority Act;

15 T. to employ architects, engineers, attorneys
16 (other than and in addition to the attorney general of the
17 state), accountants, housing, construction and financial
18 experts and such other advisors, consultants and agents as may
19 be necessary in its judgment and to fix and pay their
20 compensation;

21 U. to contract for and to accept any gifts or
22 grants or loans of funds or property or financial or other aid
23 in any form from the federal government or from any other
24 source and to comply, subject to the provisions of the Mortgage
25 Finance Authority Act, with the terms and conditions thereof;

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1 V. to maintain an office at such place in the state
2 as it may determine;

3 W. subject to any agreement with bondholders and
4 noteholders, to make, alter or repeal, subject to prior
5 approval by the Mortgage Finance Authority Act oversight
6 committee, hereby created, to be composed of four members
7 appointed by the president pro tempore of the senate and four
8 members appointed by the speaker of the house of
9 representatives, such rules and regulations with respect to its
10 operations, properties and facilities as are necessary to carry
11 out its functions and duties in the administration of the
12 Mortgage Finance Authority Act;

13 X. to make, purchase, guarantee, service and
14 administer mortgage loans for residential housing for the
15 purposes set forth in the Mortgage Finance Authority Act where
16 private banking channels and private enterprise, unaided, have
17 not, cannot or are unwilling to make, purchase, guarantee,
18 service or administer the loans;

19 Y. to act as trustee and administer the land title
20 trust fund created pursuant to Section 58-28-3 NMSA 1978;

21 Z. to act as trustee and administrator pursuant to
22 the Low-Income Housing Trust Act; ~~and~~

23 AA. to act as trustee and statewide administrator
24 of the New Mexico housing trust fund pursuant to the New Mexico
25 Housing Trust Fund Act; and

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1 ~~[AA.]~~ BB. to do any and all things necessary or
2 convenient to carry out its purposes and exercise the powers
3 given and granted in the Mortgage Finance Authority Act."

4 Section 13. APPROPRIATION.--

5 A. Five million dollars (\$5,000,000) is
6 appropriated from the general fund to the New Mexico housing
7 trust fund for expenditure in fiscal year 2005 and subsequent
8 years to carry out the purposes of the New Mexico Housing Trust
9 Fund Act. Any unexpended or unencumbered balance at the end of
10 a fiscal year shall not revert to the general fund.

11 B. The appropriation in Subsection A of this
12 section is contingent upon the enactment into law of Senate
13 Bill 441 of the second session of the forty-sixth legislature
14 decoupling the New Mexico estate tax from the federal estate
15 tax.

16 Section 14. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2004.